

75-6143

IN THE

SUPREME COURT OF THE UNITED STATES

Term, 1976

Supreme Court, U. S.

FILED

FEB 17 1976

MICHAEL RODAN, JR., CLERK

PINKNEY THOMAS MITCHELL and
WALLACE CHARLES LANFORD, JR.,
Petitioners,

vs.

STATE OF NORTH CAROLINA,
Respondent.

RESPONSE OF THE STATE OF NORTH CAROLINA
TO PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF NORTH CAROLINA

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Dated: February 12, 1976

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CITATION TO OPINION BELOW

The Opinion of the Supreme Court of North Carolina is reported at 288 NC 360 (1975) and is appended to Petitioner's petition.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 USC §1257(3).

QUESTIONS PRESENTED

1. Whether the imposition and carrying out of the sentence of death for the crime of murder in the first degree under the law of North Carolina violates the Eighth Amendment to the Constitution of the United States?
2. Whether the Petitioners have been deprived of their constitutional right of due process of law, in violation of the Fifth Amendment to the Constitution of the United States, by virtue of the consolidation for trial of the charges against Petitioner Wallace Charles Lanford, Jr., with those against Pinkney Thomas Mitchell, Jr.?

STATEMENT OF THE CASE

Petitioners, Charles Lanford, Jr. and Pinkney Thomas Mitchell, Jr., were tried in the Superior Court of Gaston County, North Carolina, and were found to be guilty of the crimes of felonious burning of personal property and first degree murder. A sentence of death by asphyxiation of gas was pronounced. Petitioners appealed to the Supreme Court of North Carolina and the judgment was affirmed on the 7th day of October, 1975. Execution of the judgment was stayed in order to give Petitioners an opportunity to file a petition for a Writ of Certiorari in this Court.

Since the facts of this case have been fully stated by the Petitioners, and have been amplified in the Opinion of the Supreme Court of North Carolina, they are not restated here.

ARGUMENT I

THE COURT SHOULD NOT GRANT CERTIORARI TO CONSIDER WHETHER THE IMPOSITION AND CARRYING OUT OF THE SENTENCE OF DEATH FOR THE CRIME OF MURDER IN THE FIRST DEGREE UNDER THE LAW OF NORTH CAROLINA VIOLATES THE EIGHTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

PETITIONER'S QUESTION I.

This question challenges that the imposition of the death penalty for the crime of murder in the first degree violates the Eighth Amendment to the Constitution of the United States.

The Petitioners assert that the penalty of death is cruel and unusual punishment and that the Legislature of North Carolina has vested impermissible discretion in the hands of the Office of the District Attorney; since the District Attorney has the option of seeking a mandatory death penalty by prosecuting and seeking a conviction for the crime of murder in the first degree, as opposed to seeking the penalty of life imprisonment by prosecuting and seeking a conviction for the crime of murder in the second degree. Petitioner's assertions, in essence, question the propriety of the North Carolina Legislature to prescribe punishment. There is no valid reason for the court to grant certiorari at this time to hear this question.

This Court granted certiorari to Petitioner Jessie Thurman Fowler in the case of State v. Fowler, 285 NC 90, 203 SE 2d 803 (1974) where both the issue of the constitutionality of the death penalty and the question as to whether penal policy is more appropriately to be reviewed by the Legislature than by the Judiciary has been presented to this Court. Extensive briefs were submitted in that case and oral arguments were made before this Court on April 21, 1975. Hence, this question has already been submitted to this Court. Therefore, any decision in this case should be dependant upon the outcome of the Fowler case, and the Petition to grant Certiorari should be denied.

ARGUMENT II

PETITIONER LANFORD'S RIGHT UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES WAS NOT VIOLATED BY THE TRIAL COURT'S CONSOLIDATION OF THE CASES FOR TRIAL AGAINST PETITIONERS LANFORD AND MITCHELL.

PETITIONER'S QUESTION II.

Petitioner Lanford contends that in cases wherein the defendant is charged with an offense which carries with it a mandatory sentence of death that severance should be required in order to insure fundamental fairness to the defendants. Petitioner Lanford further contends that had he been tried separately he probably would have been acquitted; that the inconsistencies of the defense of his co-defendant, Pinkney Thomas Mitchell, Jr., and his own defense made a consolidation of the cases for the trial prejudicial, resulting in his conviction of the offense of first degree murder, carrying with it a mandatory death penalty. The North Carolina Court has consistently held that where there are two indictments in which both defendants are charged with the same crimes, they may be consolidated for trial in the discretion of the Court. State v. Dawson, 281 NC 645, 190 SE 2d 196 (1972); State v. White, 256 NC 244, 123 SE 2d 483 (1962). Furthermore, G.S. §15-152 (now codified as G.S. §15A-926) expressly authorizes the Court in North Carolina to order consolidation for trial of two or more indictments in which defendant or defendants are charged with crimes of the same class, which are so connected in time or place that the evidence at the trial of one of the indictments will be competent and admissible at the trial of the others.

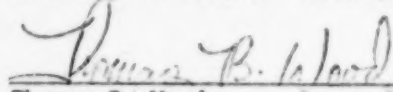
As the Opinion of the North Carolina Supreme Court points out, there was absolutely nothing in the record at the trial level to indicate that the trial judge in making his ruling on consolidation knew that Petitioner Mitchell would take the witness stand. It is difficult to understand how Petitioner Lanford can contend that he was prejudiced by Petitioner Mitchell testifying when in fact Petitioner Mitchell admitted the killing and the burning of the vehicle and attempted by his testimony to exonerate Petitioner Lanford in every way. The State would argue that Petitioner Lanford has failed to show any prejudice resulting from the denial of his motion to sever, and that the Petition to grant Certiorari should be denied. State v. Dawson, supra.

CONCLUSION

It is therefore respectfully submitted that the question concerning the constitutionality of the death penalty as applied under the law of North Carolina is already before this Court; that there is no evidence that the Petitioners were deprived of any constitutional right by the fact that the trial judge denied their motion to seyer and granted the State of North Carolina's motion to consolidate the two cases for trial. The Petition for Writ of Certiorari to the Supreme Court of North Carolina should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I hereby certify that I have served a copy of the foregoing
Response of the State of North Carolina to Petition for Writ of Certiorari
to the Supreme Court of North Carolina on Petitioners by depositing same
in the United States mail to:

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This is the 19th day of February, 1976.



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